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1 BILL LOCKYER, Attorney General
of the State of California
2 MARY E. HACKENBRACHT
Senior Assistant Attorney General
3 RUSSELL B. HILDRETH
Deputy Attorney General
4 State Bar No. 166167
1300 I Street
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 327-7853
Fax: (916) 327-2319
7 Attorneys for California Department of
Pesticide Regulation

2006 NOV 28 AM 11:50

COUNTY OF STANISLAUS

BY _____
DEPUTY

8
9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF STANISLAUS

11 PATTERSON FLYING SERVICE, CHRIS
12 TRINKLE

13 Petitioner,

14 v.

15 CALIFORNIA DEPARTMENT OF PESTICIDE
REGULATION, et al.

16 Respondent,

17 THE PEOPLE OF THE STATE OF
18 CALIFORNIA
AND DOES 1-25,

19 Real Parties in Interest.

Case No.: 381269

**NOTICE OF ENTRY OF
ORDER DENYING
PETITION FOR WRIT OF
MANDATE; JUDGMENT OF
DISMISSAL**

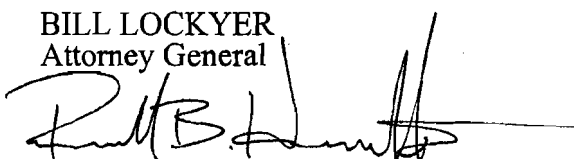
Petition Filed: June 20, 2006

20
21 To all parties and their attorneys of record:

22 PLEASE TAKE NOTICE that on November 21, 2006, the Superior Court, County
23 of Stanislaus, entered an order denying petition for writ of mandate and granting judgment
24 of dismissal, in the form attached and incorporated by reference.

25 Dated: November 27, 2006

BILL LOCKYER
Attorney General

26
27 
28 Russell B. Hildreth
Deputy Attorney General

1 BILL LOCKYER, Attorney General
of the State of California
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3 RUSSELL B. HILDRETH
Deputy Attorney General
4 State Bar No. 166167
1300 I Street
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 327-7853
Fax: (916) 327-2319
7 Attorneys for California Department of
Pesticide Regulation

FILED
2006 NOV 21 AM 11:45
CLERK OF COURT
JUDICIAL BRANCH
CLERK

8
9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF STANISLAUS

11
12 PATTERSON FLYING SERVICE, CHRIS
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13 Petitioner,

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15 CALIFORNIA DEPARTMENT OF PESTICIDE
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16 Respondent,

17 THE PEOPLE OF THE STATE OF
18 CALIFORNIA
19 AND DOES 1-25,

20 Real Parties in Interest.

Case No.: 381269

**ORDER DENYING
PETITION FOR WRIT OF
MANDATE; JUDGMENT OF
DISMISSAL**

Date: October 27, 2006
Time: 8:30 a.m.
Dept.: 21, Judge Mayhew

Petition Filed: June 20, 2006

21
22 **ORDER DENYING PETITION FOR WRIT OF MANDATE**

23 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD: This matter came on
24 regularly for hearing on October 27, 2006, Hon. William A. Mayhew, presiding, the Court
25 having issued its tentative ruling the day before, denying the petition for writ of mandate.
26 A true and correct copy of the Court's tentative ruling is attached and incorporated by
27 reference.

1 At the October 27, 2006, hearing, the Court heard arguments on the merits of the
2 Petition. Counsel William McPike appeared for Petitioners Patterson Flying Service and
3 Chris Trinkle. Russell Hildreth appeared for Respondent California Department of Pesticide
4 Regulation. After oral argument the Court affirmed the tentative ruling.

5 Accordingly, it is hereby ordered that the petition for writ of mandate is DENIED.
6 Respondent's motion to strike the entire petition is DENIED. Respondent's motion to strike
7 the extra-record evidence is GRANTED.

8 **JUDGMENT OF DISMISSAL**

9 The Court, having on October 27, 2006, denied the petition for writ of mandate,
10 HEREBY ORDERS, ADJUDGES, AND DECREES that the Petition and all requests for
11 relief therein are in all respects DISMISSED and judgment shall enter in favor of
12 respondents California Department of Pesticide Regulation.

13 This action is dismissed.


14 IT IS SO ORDERED.

15
16 DATED: _____

JOHN F. KRAETZER
Hon. JOHN F. KRAETZER
Judge of the Superior Court FOR
WILLIAM A. MAYHEW

17
18
19 APPROVED AS TO FORM:

20
21 DATED: 11/2/06


William McPike, Esq
Counsel for Petitioners

Tentative Ruling Announcement

Friday October 27, 2006

If the Tentative Ruling in your case is satisfactory, you need not appear at the scheduled time, the ruling becomes final, and the prevailing party prepares the order.

However, if you are not satisfied with the Tentative Ruling, and wish to appear and argue the matter, **YOU MUST NOTIFY** the Clerk's office and opposing counsel of your intent before **4:00 p.m. TODAY**.

When doing so, you must indicate as to which issue(s) and/or motion(s) a hearing is being requested. If requesting a hearing for clarification of tentative ruling, specify what matter(s) and/or issue(s) need clarification.

You may notify the Clerk's office by calling: (209) 558-6000 or (209) 525-7702, prior to 4 p.m.

Please refer to Local Rule of Court 3.20(b) concerning court reporter fees.

If a **Hearing is Required** or **You Request a Hearing** for a Law and Motion Matter Scheduled in Department 1 or 15 in Modesto or Department 21 in Ceres, please contact the Court Reporter Coordinator at (209) 525-6373 **to request a reporter and determine availability**. If a Staff Reporter is not available, you may need to provide your own.

The following are the tentative ruling cases calendared before Judge Roger M. Beauchesne in Dept # 15:

353721 – RODRIGUEZ V. CITY OF MODESTO – Plaintiffs Karin Rodriguez, Jocelyn Reed and Debra Eggerman's Motion to Augment Expert Witness Information -- **GRANTED**, as unopposed. The Court grants the motion unconditionally; i.e. the granting of the motion is not conditional upon allowing Defendants to redepose the already- deposed witnesses. The reciprocal requests for monetary sanctions are **DENIED**. To impose any sanctions under the circumstances presented would be unjust.

371602 – BAHLMAN V. FLEETWOOD MOTOR HOMES – Defendants Fleetwood Motor Homes' of Pennsylvania's Motion for Summary Judgment or in the Alternative Summary Adjudication (Continued from 10/13/06) – **DENIED**. The Court notes again that the Plaintiff has voluntarily dismissed her first cause of action under the Song Beverly Consumer Warranty Act – therefore the only cause of action addressed by this motion is her third cause of action for violation of the federal Magnusson-Moss Warranty Act. In this regard, Defendant failed to meet its moving burden of production by failing to make a prima facie showing that there are no triable issues of material fact as to a violation of the federal act. Defendant puts forth no evidence whatsoever that it issued or provided Plaintiff with either a full or limited warranty, or any warranty at all. Without evidence as to the scope of the warranty, it is impossible to determine the application of 15 USC 2304(a)(4), as requested by Defendant. Even if Defendant had met its burden of proof on the motion, Plaintiff's supplemental points and authorities and separate statement filed with the Court pursuant to the Court's 10/13/06 minute order provide evidence of a triable dispute of material fact as to whether the Plaintiff provided Defendant Fleetwood with a "reasonable opportunity to cure" under the warranty provided to her – whether limited or full. Normally whether or not a manufacturer was given a reasonable opportunity to cure a defect (by either repairing, replacing or refunding) is an issue of fact for the trier of fact. Only when no reasonable jury could decide in an opposing party's favor is a moving party entitled to

summary judgment on this issue. In the Court's opinion, a reasonable jury could determine that Plaintiff did provide Defendant Fleetwood with a reasonable opportunity to cure the major manufacturing defects in this motorhome by leaving it with a purportedly reputable dealership for over 40 days. The motion for summary judgment, or in the alternative summary adjudication, is therefore **DENIED**.

The following are the tentative ruling cases calendared before Judge William A. Mayhew in Dept # 21 (located at 2744 2nd Street, Ceres):

376099 – SATTERWHITE V. EMPIRE – Defendant's Motion for Summary Judgment or, in the Alternative, Motion for Summary Adjudication – **MOOT** by settlement.

376498 – AMIRFAR V. JULIAN – Attorney's Motion to be Relieved as Plaintiff's Counsel – **GRANTED**.

378710 – HATTON V. BECK – Defendant's/Cross-Complainant's, William H. Beck, Donald Beck, and NXCESS, LLC'S Motion for Preliminary Injunction or Order Releasing Funds from bank trust account for payment of Federal and State Taxes, Penalties, and Interest – **DENIED**. Request to introduce oral testimony **DENIED**. Matter can be adequately addressed by declaration.

381269 – PATTERSON FLYING V. CA. DEPARTMENT OF PESTICIDE – (a) Respondent's Motion to Strike Extra Record Evidence (b) Respondent's Motion to Strike Petition for Writ of Administrative Mandamus (c) Petitioner's Petition for Writ of Administrative Mandamus (Continued from 9/13/06) – The petition of Patterson Flying Service, Inc., and Chris Trinkle, is **DENIED**. Respondent's motion to strike the entire petition is **DENIED**. Respondent's motion to strike extra-record evidence is **GRANTED**.

383790 – EASON V. BRASIL – Petitioner's Petition to Confirm Contractual Arbitration Award – **DENIED**, insufficient notice.

1 **DECLARATION OF SERVICE**

2

3 Case Name: *Patterson Flying Service, et al v. Calif. Dept. of Pesticide Regulation, et al*

4 Court No.: **Stanislaus County Superior Court Case No. 381269**

5

6 I declare that I am employed in the County of Sacramento, California. I am over the age of 18
7 years and not a party to the within entitled cause: my business address is 1300 I Street,
8 Sacramento, California 95814. I am readily familiar with the business practice, at my place of
9 business, for the collection and processing of correspondence for mailing with the United States
Postal Service. Correspondence so collected and processed is deposited with the postal service
in the ordinary course of business on the same day on which it is placed for mailing.

10 On November 27, 2006, I served the following document:

11 **NOTICE OF ENTRY OF ORDER DENYING PETITION**
12 **FOR WRIT OF MANDATE; JUDGMENT OF DISMISSAL**

13 on the parties in said action as follows:

14 _____ **PERSONAL SERVICE through ATTORNEYS DIVERSIFIED SERVICE**
15 by placing a true copy thereof enclosed in a sealed envelope, addressed as shown
below.

16 _____ **(OVERNIGHT MAIL through GOLDEN STATE COURIER)** by
17 placing a true copy thereof enclosed in a sealed envelope, addressed as
shown below:

18 _____ **(FACSIMILE)** by facsimile, as shown below:

19

20 _____ **(REGULAR MAIL)** by placing a true copy thereof enclosed in a sealed
21 envelope in the internal mail collection system, addressed as shown below:

22 **William McPike, Esq.**
23 **36360 Peterson Road**
Auberry, CA 93602


Attorney for Petitioner

24

25 I declare under penalty of perjury the foregoing is true and correct and that this declaration was
26 executed on September 7, 2006, at Sacramento, California.

27

28 ROCHELLE UDA-QUILLEN
Typed Name


Signature